IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19047 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

AND

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUBHAI KARSANBHAI RAIKA & 2 - Petitioner(s)

Versus

GUJARAT STATE ELECTION COMMISSIONER & 9 - Respondent(s)

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Appearance :

MR YATIN OZA, Sr. Advocate with MR SHAMIK SANJANWALA for Petitioner(s) : 1 - 4.

MR SN SHELAT, ADVOCATE GENERAL assisted by MR NV ANJARIA for Respondent(s) : 1,

MR PRASHANT G DESAI for Respondent(s) : 2,

MR PRANAV G DESAI for Respondent(s) : 3,

MR RM CHHAYA for Respondent(s) : 4 – 5.

MR KAMAL B TRIVEDI, ADDL. ADVOCATE GENERAL with MR ARUN D OZA, GOVERNMENT PLEADER for Respondent(s) : 6

MR DD VYAS, Sr. Advocate and MR BS PATEL for the Interveners.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 21/09/2005
ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE M.S. SHAH)

In this PIL petition under Article 226 of the Constitution, four Councillors of Surat, Vadodara, Rajkot and Bhavnagar Municipal Corporations have prayed for a writ of mandamus or any other appropriate writ to direct the Gujarat State Election Commissioner, the Municipal Corporations of the cities of Surat, Vadodara, Rajkot and Bhavnagar and the State of Gujarat to take all steps necessary for the purpose of holding elections for constituting the Municipal Corporations for the respective cities before the expiry of duration of the term of the present elected bodies of those Corporations constituted pursuant to the elections held in October, 2000.

2. It is the case of the petitioners in this petition filed on 16th September 2005 that since the Municipal Corporations for the cities of Surat, Vadodara, Rajkot and Bhavnagar were constituted in October 2000 and the term of the elected bodies is due to expire on 16th, 16th, 15th and 20th October 2005 respectively, under the mandate of Clause (3) of Article 243U of the Constitution, the Election Commission is required to hold elections before the aforesaid dates; that the Constitution does not contemplate any hiatus between the expiry of the term of the existing body and the completion of elections for constituting the newly elected body. It is contended by the petitioners that the State Election Commission has violated the constitutional mandate contained in Article 243U(3) by not taking steps to hold elections before the aforementioned dates.

3. When this petition came up for preliminary hearing on Monday, 19th September

2005, Rule was made returnable on 20th September, 2005. Affidavit in reply has been filed by Mr PC Barot, Deputy Election Commissioner in the State Election Commission ("the Election Commission" or "the Commission") pointing out the reasons for inability of the Commission to hold elections to the Municipal Corporations of Bhavnagar, Jamnagar, Surat, Rajkot and Vadodara within the time limits stipulated in Clause (3) of Article 243U of the Constitution. It has been mainly submitted on behalf of the Commission that -

(i) in view of the provisions of Section 5(3)(a) of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the BPMC Act"), upon availability of the 2001 census figures, the State Government was required to issue necessary notifications in the Official Gazette determining the number of wards into which the cities shall be divided, the number of councillors to be elected to the Corporations and the number of seats to be reserved in favour of the Scheduled Castes, Scheduled Tribes and women and that thereafter the Election Commission was to carry out determination of the boundaries of the wards and the allocation of seats reserved in favour of the aforesaid classes amongst the wards in the prescribed manner. After getting the 2001 census figures on 16.4.2004, the Commission went on reminding the State Government since April 2004 to issue the necessary notifications under the aforesaid provisions having regard to the 2001 census figures.

(ii) It was only when the State Government issued the notifications for this purpose on 8th June 2005 determining the number of wards, the number of constituencies and the number of seats reserved for the reserved categories that the Commission could undertake the exercise of determination of the boundaries of the wards and the allocation of seats reserved in favour of the reserved categories and issued the draft notifications to that effect on 18th July 2005 inviting objections and after

considering those objections and after holding consultations with the political parties recognized under the Representation of People Act, 1951, the Commission issued the notifications dated 31st August 2005 determining the boundaries of the wards and the allocation of seats in favour of the reserved categories.

(iii) On account of the census figures of 2001, the number of wards, the number of seats and the reservation of seats in wards have undergone substantial changes. In Surat, the population as per 2001 census figures has gone upto 24.33 lakhs as against the population of 14.98 lakhs as per 1991 census. In Surat also, the number of wards has increased, the number of seats has also increased and there is consequential increase in the reservation of seats for different categories. Prior to delimitation of wards on 31st August 2005, there was such imbalance that in one ward in Surat the population is 36,321 and in another ward in the same city, the population is 1,51,474.

(iv) In Vadodara Municipal Corporation, the territorial limits have been extended with area of 40.73 sq.kms. by including nine adjoining gram panchayat areas with population of about 81,525 persons, out of whom about 45,000 to 50,000 people are likely to get right of franchise at the Municipal elections. In view of the increase in population, from 10.22 lakhs in 1991 to 13.87 lakhs in 2001, the number of wards has gone up and also the number of seats has increased from 78 to 84 and there is consequential increase in the number of seats for the reserved categories.

(v) As required under Section 8 of the BPMC Act, the electoral rolls for wards in each of the Corporations concerned are being revised and the revision as on 1.1.2005 is underway in accordance with the following schedule notified in the Commission notification dated 3.9.2005 :-

Sr.No	Particulars	Programe
1	Publication of the preliminary ward-wise voters' list for 2005 under Rule 4	**29.09.2005**
2	Last date for lodging objections under Rule 6	**21.10.2005**
3	Last date for taking final decisions after scrutiny of objections	**07.11.2005**
4	Publication of supplementary ward-wise voters' list for 2005 under Rule 6	**11.11.2005**
5	Final publication of ward-wise voters' list under Rule 7(1)	**14.11.2005**

(vi) Since after final publication of the ward-wise voters' lists for the reconstituted wards, the final stage of the election process will comprise of minimum 28 days, the election program can not be completed before 16th December, 2005.

It is, therefore, the stand of the Election Commission that if the Commission is required to prepone the date of election from December 2005 to any earlier month, the elections will have to be held on the basis of the electrol rolls as on 1.1.2004 and the entire exercise of delimitation of wards and increasing the number of seats and the number of reserved seats will be set at naught.

(vii) The Commission has also referred to certain administrative and physical difficulties in smooth holding of elections if there is any preponement of the election program from December 2005 to any earlier month. It is pointed out that the State Election Commission is also engaged in the work of holding elections to 50 Municipalities in the State which are due and to be completed before 31st October, 2005 (except Mehsana Municipality where the date is 31.12.2005).

There are also 25 District Panchayats and 209 taluka panchayats where elections are due and the work of holding and completing the elections to the said bodies is already underway. It is also submitted that intervention of festivals like Navratri and month of Ramzan is also considered to be a relevant consideration for announcing the election programs to the local bodies.

The preparatory work comprises of selection of polling booths with their physical verification in respect of each of the wards of the five Municipal Corporations, appointment of Returning Officers, Presiding Officers and Polling Officers at each polling booth, printing of stationery, ballot papers, arranging for Electronic Voting Machines and getting them examined by the experts who are to come from outside the State, the quantity of indelible ink to be obtained, and garnering of other required machinery for the attendant election work like printing of voters list within a short time gap. It is submitted that it may not be possible to undertake all these voluminous work simultaneously during the calendar of dates for holding of elections. In fact, the Commission as a matter of administrative convenience makes formal announcement of elections only after completion of above spadework and thereafter actual notification of calendar of election is announced.

AHMEDABAD MUNICIPAL CORPORATION ELECTIONS

4. Since strong reliance has been placed by the petitioners on the interlocutory order dated 13.9.2005 of the Hon'ble Supreme Court in the litigation pertaining to elections to the Ahmedabad Municipal Corporation, it is necessary to refer to the said litigation.

4.1 On 20.5.2005, Mr Kishansinh Tomar, Chairman, Standing Committee of the Ahmedabad Municipal Corporation filed Special Civil Application No. 9847 of 2005 praying for a writ of mandamus to direct the State Election Commissioner, State of

Gujarat and the Ahmedabad Municipal Corporation to forthwith take all steps necessary for the purpose of holding elections for constituting the Municipal Corporation for the City of Ahmedabad before expiry of the duration of the Corporation i.e. before 15th October 2005. In the said proceedings, affidavit in reply was filed on behalf of the State Election Commission pointing out various time limits required to be observed for holding elections to the Corporation. On behalf of the State Government also, various documents were produced to show that the State Government had taken expeditious steps for holding elections to the Ahmedabad Municipal Corporation and other Corporations, but there was a ban imposed by the Delimitation Commission against reconstitution of wards and it was in March 2005 that the Delimitation Commission permitted the State authorities to undertake the exercise of delimitation of wards and determination of seats on the basis of 2001 census figures.

4.2 After hearing the learned counsel for the parties, a learned Single Judge of this Court recorded the statement made on behalf of the Election Commission that the elections to the Ahmedabad Municipal Corporation will be held by 31st December, 2005. In Letters Patent Appeal, another Division Bench of this Court confirmed the said decision including the following findings given by the learned Single Judge :-

> "After receipt of the permissions from the Delimitation Commission (on 28.3.2005), one may notice from the events chronologically noted herein above that real urgency was shown by the State Government from 6th of June, 2005 onwards. This had co-incided with the receipt of notice from this Court in the present proceedings. It may be noted that this Court issued notice on 23rd of May, 2005 making it returnable on 7th of June, 2005. The notice was served on the State Government on or around 27th May, 2005. Soon thereafter, the machinery moved with greater urgency culminating into issuance of notification under Section 5 of the B.P.M.C. Act. Despite these factors I am unable to see any political malafides or any design on part of the State Government to intentionally delay the election of the Municipal Corporations. The petitioner has not laid down any firm foundation to establish malafides on the part of the respondents. I have taken some pains to examine the actions of the State Government and the different stages through

> which the process was undertaken which ultimately resulted into issuance of the notification dated 8th June, 2005. Though, it is true that some time was consumed at some stages as noted herein above and perhaps some greater urgency would have ensured issuance of notification somewhat earlier, I find that State Government had taken sufficient efforts to ensure that the notification is issued expeditiously."

The Letters Patent Bench also expressed its agreement with the learned Single Judge in coming to the conclusion that in view of the provisions of Article 243U(3) of the Constitution and Section 6B of the BPMC Act, "the Commission is under an obligation to complete the election before expiry of the term of the existing elected body. But in our view, non compliance of these provisions which casts a duty on the public authority like the Commission to do a particular act within the particular time frame does not vitiate the election (after expiry of the term) and even the appointment of Administrator during the short interregnum cannot be dubbed as illegal. The Legislature must have been conscious of the possibility of delay in the completion of election before the expiry of the term of the elected body and, therefore, an express provision has been made in the form of Section 7A for appointment of Administrator. The appellant has not challenged the vires of that Section and, therefore, we need not delve upon that issue."

The learned Single Judge gave the following finding regarding the election schedule (elections to be completed by 31st December 2005) which came to be confirmed by the Letters Patent Bench :-

> "Taking into consideration the onerous task, which has to be undertaken by the Election Commission and the State Government we must observe that the time schedule given by the Election Commission is perfectly justified."

4.3 The matter has been carried in appeal before the Hon'ble Supreme Court [SLP (C) No. 18740 of 2005] and after noting the findings given by this Court, the Apex Court has granted leave and referred the matter to the Constitution bench and passed the following

interlocutory order on 13.9.2005 :-

> "Having heard learned counsel for the parties, without prejudice to the rights and contentions, subject matter of the appeal, we are of the view that new Corporation shall be constituted on or before 15th October, 2005. We accept the alternate proposed election programme for Ahmedabad Municipal Corporation, as submitted by Mr Dave, learned senior counsel, before this Court. It reads thus :

1.	Date of Notice	15-9-2005
2.	Last date of making nomination	22-9-2005
3.	Date of scrutiny	24-9-2005
4.	Last date of withdrawal	27-9-2005
5.	Date of Poll	13-10-2005
6.	Date of counting	15-10-2005"

SUBMISSIONS ON BEHALF OF PETITIONERS

5. Mr Yatin Oza, learned counsel for the petitioners has vehemently submitted that as held in the decision of this Court in **Rasikchandra D. Acharya vs. State, 1995 (1) GLR 36,** no hiatus is contemplated by the Constitution between the expiry of the non-extendable five year term of the Corporation and the completion of election for constitution of the new Corporation. This Court may, therefore, following the interlocutory order passed by the Apex Court, direct the State Election Commission to hold elections to all the Municipal Corporations in the State before the date of completion of five year term falling between the period from 15th October and 19th October 2005. It is submitted that since the provisions of Article 243U(3) must be given overriding effect over all the different provisions being relied upon by the State Election Commission, there cannot be any impediment to enforcement of the mandatory provisions of Article 243U(3).

The learned counsel for the petitioners has also brought to our notice that the following particulars were placed for consideration of the Hon'ble Supreme Court at the hearing on 12.9.2005, which particulars were set out in a hand written note submitted by the learned counsel for the State Election Commission before the Hon'ble Supreme Court :-

"Implications going by 1991 Census figures

1. No. of wards increased from 43 to 45
2. No. of seats increased from 129 to 135
3. Population increased from 28,76,710 to 35,20,085 as on 2001
4. As on 2005 the number of population & voters has substantially increased.
5. No. of SC seats increased from 11 to 17.
6. No. of SEBC seats increased from 9 to 13
7. No. of reserved seats for women (General) increased from 33 to 35
8. No. of unreserved seats increased from 65 to 69

All the above issues will not be complied if elections are conducted by 1991 census. Looking to the actual field realities as existing in 2005 it cannot be called a fair election.

Whether the directions are (to be) applied only to AMC or all 6 Municipal Corporations?"

It is vehemently submitted that all the grounds being urged by the respondents were also pressed into service in the Ahmedabad Municipal Corporation case. Since those ground did not find favour with the Hon'ble Supreme Court as must be inferred from the order dated 13.9.2005, similar orders may be passed in the present petition also.

SUBMISSIONS ON BEHALF OF RESPONDENTS

6. On the other hand, Mr SN Shelat, learned Advocate General appearing for the Election Commission has submitted that the petition for elections to the Ahmedabad Municipal Corporation was filed in May 2005, whereas the present petition is filed only on 16th September and is being heard and decided on 21st September and, therefore, the Election Commission may not be required to hold the elections in October. It is submitted that Articles 243ZA and 243ZG of the Constitution themselves provide for a law to be made by the State Legislature for all matters relating to or in connection with the elections to the Municipalities, including delimitation of constituencies or the allotment of seats to such constituencies. Further Article 243P(g) defines "population" as "the population as ascertained at the last preceding census of which the relevant figures have been published". Article 243R provides for composition of Municipalities by filling in seats by persons chosen by direct election from the territorial constituencies to be known as wards. Article 243T provides for reservation of seats for Scheduled Castes, Scheduled Tribes and women. It is, therefore, submitted that the time taken by the Election Commission for giving effect to the provisions of Articles 243R, 243T, 243ZA(2) read with Article 243ZG and 243P(g) cannot be stigmatized as violation of the provisions of Article 243U(3) of the Constitution.

It is submitted that the controversy is required to be considered in the background of the facts already narrated in the reply affidavit (which are noted in para 3 hereinabove).

7. As regards the order dated 13.9.2005 of the Hon'ble Supreme Court in the case of elections to the Ahmedabad Municipal Corporation, the learned Advocate General submitted that the same is an interlocutory order which may not be treated as a binding precedent for a similar relief in the petition which suffers from delay and laches. It is also

submitted that the Hon'ble Supreme Court has the power to pass such orders under Article 142 of the Constitution. The learned Advocate General has also submitted that an interlocutory application has been filed by Mr Hasmukh Chhaganbhai Patel on 15.9.2005 in aforesaid SLP No. 18740 of 2005 of Mr Kishansinh Tomar praying for the following relief :-

> "It is most respectfully prayed that this Hon'ble Court may be pleased to :
>
> a) direct the Respondent No. 2 and Respondent No. 3 to hold elections for constituting the Municipal Corporations for the Cities of Rajkot, Bhavnagar, Surat, Jamnagar and Vadodara before the date of expiry of the term of the elected body of those Corporations as mandated by Article 243U of the Constitution of India."

It is stated that no orders have been passed by the Hon'ble Supreme Court on the aforesaid application of Mr Hasmukh Patel. It is, therefore, submitted that if the Hon'ble Supreme Court was inclined to give similar directions for holding elections for the other Municipal Corporations in the State of Gujarat, such a direction would have been given on the aforesaid interlocutory application or the orders would have been passed while pronouncing the orders on 13.9.2005 because the learned counsel for the State Election Commission had also mentioned in the handwritten note (submitted on 12.9.2005) referred to by Mr Oza - "whether these directions are (to be) applied only to AMC or all 6 Municipal Corporations ?".

8. We have also heard Mr DD Vyas, learned counsel representing the residents of Surat and Mr BS Patel, learned advocate representing three residents of the villages which are added to the limits of the Vadodara Municipal Corporation as per the notification dated 1.8.2002. The said learned advocates have been permitted to make their submissions as interveners and they have supported the respondent authorities by contending that if the elections were held on the basis of the unrevised electrol rolls, the names of a large number of residents of Surat and Vadodara will not be found in the

voters' lists and they will not be able to exercise their franchise in the forthcoming elections.

Mr BS Patel, learned advocate has stated that there are about 40,000 to 50,000 such persons whose names would be included in the voters' list to be published on 29.9.2005. Mr DD Vyas has also submitted that there are more than one lakh persons whose names would be added to the voters' list to be published on 29.9.2005.

CONSTITUTIONAL AND STATUTORY PROVISIONS

9. Before dealing with the rival submissions, it is necessary to refer to the relevant provisions of Part IX - A of the Constitution and also of the BPMC Act.

PART IX-A - THE MUNICIPALITIES

243P. Definition.- In this Part, unless the context otherwise requires,

(d) 'Municipal area' means the territorial area of a Municipality as is notified by the Governor;

(e) 'Municipality' means an institution of self-government constituted under article 243Q;

(g) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published.

Article 243Q provides for three types of local authorities in urban areas – a Municipal Corporation for a larger urban area, a Municipal Council for a smaller urban area and a Nagar Panchayat for an area in transition from a rural area to an urban area.

243R. Composition of Municipalities.- (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal

area shall be divided into territorial constituencies to be known as wards.

(2) ... ...

243T. Reservation of seats.- (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) to (6) ... ...

"**243U. Duration of Municipalities, etc.-** (1) Every Municipality, unless sooner dissolved under any law for the time being in force,shall continue for five years from the date appointed for its first meeting and no longer.

(2) ... ...

(3) An election to Constitution a Municipality shall be completed,-

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of dissolution;

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be

necessary to hold any election under this clause for constituting the Municipality for such period.

(4) ... ...

243ZA. Elections to the Municipalities.- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2) Subject to provisions of this Constitution, the Legislature of a State may, by law, make provision with respect of all matters relating to, or in connection with, elections to the Municipalities.

243ZF. Continuance of existing laws and Municipalities.- (1) Notwithstanding anything in this Part, any provisions of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier :

....

243ZG. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question expect by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

[emphasis supplied]

10. **BPMC Act**

2. Definitions.

In this Act, unless there be something repugnant in the subject or context,-

(18A) "election" means and includes entire election process commencing from the delimitation of constituencies to be known as wards and all stages culminating into election of a councillor and it is always deemed to have meant and included entire election process as aforesaid.

5. Constitution of Corporation.

(3) Where general Election is to be held immediately after,

(i) "**a larger urban area"** as specified under clause (2) of the article 243Q of the Constitution of India, is made, or

(ii) the census is taken under the census Act (37 of 1949) 1948 and the relevant figures of which have been published, or

(iii) the limits of a city are altered,-

(a) the State Government shall, by notification in the official Gazette, determine the number of wards into which the city shall be divided, the number of councillors to be elected to the Corporation and the number of seats to be reserved in favour of the Scheduled castes, the scheduled Tribes, the backward classes and women as provided in this section, and

(b) the State Election Commission thereafter shall carry out the determination of the boundaries of the wards and the allocation of seats reserved in favour of the scheduled Castes, Scheduled Tribes, the backward classes and women among the wards in the prescribed manner.

6. Duration of Corporation :

(1) Every Corporation unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer.

(2) A Corporation constituted upon the dissolution before the expiration of its duration shall continue only for the remainder of the period for which it would have continued under sub-section (1) has it not been so dissolved.

6B. Election to Constitute the Corporation :-

An election to constitute a corporation shall be completed -

(a) before the expiration of its duration specified in sub-section (1) of the section 6.

(b) .....

7A. Provision for appointment of Administrator after expiry of normal term of office of Councillors.

(1) Where,

(i) ... ...

(ii) due to unforeseen circumstances such as natural calamity riots, Communal disturbances the election to constitute Corporation could not be completed before the expiry of its duration,

the State Government may by order published in the official Gazette appoint a person as an Administrator to manage the affairs of the Corporation during the period from the date specified in the order upto the date immediately preceding the date of the first meeting, after general election.

8. Qualifications of voters.

(1) For every ward, there shall be a list of voters.

(2) The list of voters shall be the same as the electrol roll of the Gujarat Legislative Assembly prepared and revised in accordance with the provisions of the Representation of the People Act, 1950 for the time being in force and as revised, modified, updated and published in accordance with the provisions of sub-section (3).

(3) Subject to the superintendence, direction and control of the State Election Commission the list of voters shall be revised, modified,

updated and published by such officers as may be designated by the State Election Commission in this behalf in the prescribed manner.

(4) No person shall be entitled to have his name included in the list of voters for more than one ward and for any ward more than once.

(5) The list of voters for any ward published under sub-section (2) shall remain in operation until a revised list of voters in respect of a Municipal Corporation is so published.

14. Election by State Election Commission :

(1) The superintendence, direction and control of the preparation of electrol rolls for, and conduct of, all the election of the Corporations shall be vested in the State Election Commission.

(2) The State Election Commission shall hold the election as per rules made by the State Government.

(3) ... ...

(4) ... ...

(5) The State Government shall, when so required by the State Election Commission, make available to it the staff as may be necessary for the discharge of the function conferred on it by clause (1) of article 243K of the Constitution of India.

(6) The State Election Commissioner appointed immediately after the commencement of the said Act shall commence the work of delimitation of the constituencies to be known as wards within one month from the date of his appointment as per the last published census figures.

(7) Notwithstanding anything contained in the principal Act or in any decree, order or direction of any Court, the election of the corporations shall be held in accordance with the provisions of the Constitution (seventy-fourth Amendment) Act, 1992 for Municipalities and the provisions of the Bombay Provincial Municipal Corporation Act, (Bom. LIX of 1949) 1949 as amended

by the said Act and the rules made by the State Government in this behalf.

[emphasis supplied]

11. After setting out the relevant statutory provisions, it is also necessary to refer to the statutory rules having a bearing on the election process commencing from the stage of delimitation of wards. There are statutory Rules framed under Section 456(1) read with Sections 5, 8, and 14 of the BPMC Act such as Bombay Provincial Municipal Corporation (Delimitation of Wards and Allocation of Reserved Seats) Rules, 1994, Bombay Provincial Municipal Corporation (Registration of Voters) Rules, 1994, Bombay Provincial Municipal Corporation (Conduct of Election) Rules, 1994, as amended by the notification dated 21.1.1995 and also the provisions of the Delimitation Act, 2002. The Delimitation Commission constituted under the said Act is required to readjust the division of each State into territorial constituencies for the purpose of elections to the House of the People and to the State Legislative Assembly on the basis of the census figures as ascertained at the census held in the year 1991. These provisions assume relevance in view of sub-section (2) of Section 8 of the BPMC Act which provides that the list of voters for the Municipal elections shall be the same as the electrol roll of the Gujarat Legislative Assembly prepared and revised in accordance with the provisions of the Representation of the People Act, 1950 and as revised, modified, updated and published in accordance with the provisions of sub-section (3) which provides that subject to the superintendence, direction and control of the State Election Commission, the list of voters shall be revised, modified, updated and published by such officers as may be designated by the State Election Commission in this behalf in the prescribed manner.

DISCUSSION

12. Having heard the learned counsel for the parties, it appears to us that though in the decision dated 8.8.2005 a view appears to have been expressed by a Coordinate Bench of this Court that non compliance with the provisions of Article 243U(3) of the Constitution and Section 6B of the BPMC Act does not vitiate the elections, taking a clue from the interlocutory order dated 13.9.2005 of the Hon'ble Supreme Court, we called upon the learned Advocate General representing the State Election Commission to indicate whether it was possible to follow the interlocutory order dated 13.9.2005 of the Hon'ble Supreme Court by directing the Election Commission to follow the program with the same time limits. The learned Advocate General submitted that it was not possible to do so and gave the following comparative dates :-

		For AMC SC Order dtd.13.9.05	For other Muni. Corporations as on 21.9.2005
1.	Date of Notice	15-9-2005	23-9-2005
2.	Last date of making nomination	22-9-2005	30-9-2005
3.	Date of scrutiny	24-9-2005	2-10-2005
4.	Last date of withdrawal	27-9-2005	5-10-2005
5.	Date of Poll	13-10-2005	21-10-2005
6.	Date of counting	15-10-2005	23-10-2005

It is, therefore, submitted by the learned Advocate General that even as per the Supreme Court formula for the Ahmedabad Municipal Corporation, it is not going to be possible to hold elections to any of the remaining five Municipal Corporations before expiry of their five year term falling between 15th and 19th October 2005. There is going to be a hiatus as contemplated by Section 7A of the BPMC Act and, therefore, the

Election Commission may be permitted to hold elections to the remaining five Corporations on the basis of determination of wards, seats and reservation of seats as already notified in the State Government notifications dated 8.6.2005 and on the basis of the Election Commission notifications dated 31.8.2005 giving detailed determination of the boundaries of the wards in the Municipal Corporations and the Election Commission notification dated 3.9.2005 for preparation and publication of the ward-wise voters' lists (quoted in para 3(v) hereinabove) under the BPMC (Registration of Voters) Rules, 1994.

The learned Advocate General submitted that since the date of final publication of the final voters' list is going to be 14th November 2005, on that basis, the elections to the Corporations can be completed only by 16th December 2005. It is submitted that this will also enable the Commission to give effect to the provisions of Articles 243R. 243T and 243ZA(2) read with Article 243ZG(a) and 243P (g) of the Constitution.

13. The learned Advocate General has submitted that the entire election process comprises of the following three stages :-

I. Delimitation of wards and determinations of seats : (8th June to 31st August)

(this period included the month of July 2005 when the Municipal Corporations were required to grapple with the situation arising from floods or heavy rains in the concerned Municipal areas.)

II. Preparation & Publication of Electrol Rolls : (3rd Sept. to 14th Nov.)

(i)	Period of preparing ward-wise and division wise list of voters on the basis of list of voters of State Assembly of 2002 and supplementary voters list prepared upto 2005.	27 days	29.09.05

(ii)	Publication of preliminary voters list inviting objections under Rule 6 within 22 days (including Navratri festival days)	22 days	21.10.05
	Consideration and disposal of the objections received within 17 days (including Diwali and Id holidays from 30th Oct. to 6th Nov.)	17 days	07/11/05
	Preparation of supplementary Lists and publication of final voters list	7 days	14.11.05

III. Election process and its preparation : (15th Nov. to 16th Dec.)

(i)	Appointment of Election Officer, sanctioning of polling booths, consultation with recognized political parties, printing of ballot papers, etc.		
	Declaration of programme of Election		15.11.05
(ii)	Holding of elections upto the stage of actual polling	28 days	17.11.05 to 16.12.05

It is, therefore, submitted that the total period required for all the three aforesaid stages is at least 200 days i.e. 6 months and 20 days. The said 200 day process could not have commenced before 8.6.2005 when the State Government issued notification under Section 5(3)(a) of the BPMC Act.

14. Since the question about interpretation of various provisions in Part IX A of the Constitution including Articles 243P, 243T, 243U, 243ZA and 243ZF is pending before the Hon'ble Supreme Court, it is not necessary to make any final pronouncement, but it does appear that the Constitution has cast an obligation to complete an election to constitute a Municipality (which includes a Municipal Corporation) before the expiry of its duration of five years from the date appointed for its first meeting. All the provisions

of Part IXA of the Constitution including the provisions of Sections 243P(g), 243R, 243T, 243U, 243ZA, 243ZF and 243ZG are required to be read harmoniously. There is no manner of doubt that all the authorities concerned with determination of number of wards in a municipal area and the number of seats of councillors and also the authorities determining the number of seats reserved for Scheduled Castes, Scheduled Tribes and for women and also the authorities for delimiting wards are required to keep in mind the mandate enshrined in Article 243U(3) of the Constitution. All the other constitutional and statutory authorities are required to assist and enable the State Election Commission to complete the election to constitute a Municipal Corporation or Municipality before the expiry of its duration as specified in clause (1) of Article 243U. As mentioned in the Statement of Objects and Reasons in the Constitutional Amendment Bill, 1991 for Constitution (74th Amendments) Act for inserting Parts IX and IXA in the Constitution, the objects of these amendments, inter alia, were -

(i) ....

(ii) ensuring regular conduct of elections;

(iii) ensuring timely election in the case of supersession; and

(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

15. As observed by this Court in **Abdulgani Abdulbhai Kureshi vs. State of Gujarat, 1992 (1) GLR 503,** the process for issuing notifications under Section 5(3) of the BPMC Act has to commence at least nine months before the due date to election to the Municipal Corporation and that such process can start even earlier. We are, therefore, of the view that where the Election Commission finds that the provisions of sub-section (3) of Section 5 of the BPMC Act are applicable, at least one year before the due date of elections to the Municipal Corporations, the State Election Commission must start activating and alerting all the other constitutional and statutory authorities for timely performance of their functions so as to enable the Commission to conduct and complete

elections to the Municipal Corporations within the time limit stipulated in Article 243U(3). Even in a case where the provisions of sub-section (3) of Section 5 of the BPMC Act are not applicable i.e. when the State Election Commission has merely to proceed from the stage of revision of electrol rolls, the Commission must start taking all the necessary steps at least six months before the last date for completion of the elections so that all the stages of the election process are completed within the time limit mandated by the provisions of clause (3) of Article 243U.

16. What we have been noticing in these litigations is that even where the State Election Commission discharges its duty in right earnest after the other authorities perform their functions upon completion of which the State Election Commission is to commence its activities, it is usually the State Election Commission which has to bear the brunt of litigation and face the music for not complying with the time limit for completion of elections to such local authorities as enshrined in the constitutional provisions (including the allegations of acting under the dictates of the State Government and even to the extent of political mala fides). We have also noticed the plea of helplessness on the part of the State Election Commission when the other constitutional or statutory authorities like the State Government, Municipal Corporations or Delimitation Commission may not be prompt in the discharge of their duties or performance of their functions or in taking the decisions.

17. But in the ultimate analysis, we are of the firm view that it is the State Election Commission which is primarily responsible for ensuring completion of elections to local bodies within the time limit stipulated in Article 243U(3) or in Article 243E(3) of the Constitution because Article 243ZA and Article 243K specifically provide that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, the elections to the Municipalities and to panchayats shall be vested in a State Election Commission consisting of State Election Commissioner to be appointed by the

Governor. Similarly, clause (3) of Article 243K provides that a Governor of a State shall, when so requested by the State Election Commission, make available to the Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1) of Article 243K and 243ZA. Similarly, the power of a State Legislature to make provision by law with respect to all matters relating to, or in relation with, elections to the Municipalities (which includes Municipal Corporations) and to Panchayats is expressly subject to the provisions of the Constitution (Articles 243ZA(2) and 243K(4)).

18. In view of the above provisions and the constitutional status given to the Municipalities and Panchayats, we are of the view that if there is any delay or inaction on the part of any other constitutional or statutory authority including the State Government, the Municipalities or the Panchayats or any other authority, the State Election Commission is not only empowered, but also duty bound to bring it to the notice of all other constitutional and statutory authorities concerned to act with such expedition as to assist and enable the State Election Commission to conduct and complete the elections to local authorities within the constitutional calender. Although such exercise may begin in the form of requests which may turn into reminders, there is nothing to prevent the State Election Commission from proceeding further and even cautioning and alerting the constitutional and statutory authorities to the consequence of delay or inaction on the part of such other authorities. We have no hesitation in observing that if the other constitutional or statutory authorities do not pay heed to such request or reminders of the State Election Commission, there is nothing to prevent the State Election Commission from moving the Governor of the State or even moving this Court under Article 226 of the Constitution for ensuring due compliance with the provisions of clause (3) of Article 243U and clause (3) of Article 243E of the Constitution. We are of the view that it is necessary to remind the State Election Commission of its status as well as its powers and duties to see that the institution of the State Election Commission is strengthened and that

the State Government, Municipalities, Panchayats or other authorities do not take the liberty of timing their actions or decisions depending on their convenience or depending on the personality and temperament of the Election Commissioner. We believe that strengthening the constitutional institutions such as the State Election Commission is a more effective method of ensuring compliance with the letter and spirit of constitutional provisions including those contained in clause (3) of Article 243U and in clause (3) of Article 243E and also other provisions for a participative constitutional democracy. We are sure that these observations would be taken in the right spirit and that henceforth all concerned will treat the time limit stipulated in clause (3) of Article 243U in Part IX-A and the time stipulated in clause (3) of Article 243E of Part IX of the Constitution as not merely mandatory, but also paramount.

19. Since the first meeting of the four Corporations under considerations was held on the dates falling between 15th and 19th October, 2000, the elections to the said Corporations were required to be completed before the relevant dates falling between 16th and 19th October 2005. As per the statement coming from the learned counsel for the State Election Commission, the elections to the above Corporations are going to be completed by 16th December 2005. When the petition regarding elections to the Ahmedabad Municipal Corporation was being heard, the Commission had agreed to complete the entire election process for all the Corporations in the State by 31st December 2005. The allegations of the petitioner in the Ahmedabad case alleging mala fides were examined by a learned Single Judge of this Court in Special Civil Application No. 9847 of 2005 and the findings given by the learned Single Judge were affirmed by the Letters Patent Bench as already indicated in para 4 hereinabove. In view of those findings of the Letters Patent Bench, it is not open to this Court to go behind the findings given by the coordinate Bench of this Court. However, in view of the interlocutory order dated 13.9.2005 of the Apex Court, we did call upon the learned Advocate General appearing for the State Election Commission to indicate whether it was possible to fix an early

election program for the other Municipal Corporations as well. It transpires that even as per the time-table accepted by the Supreme Court for the Ahmedabad Municipal Corporation, now it is not going to be possible to hold elections to any of the remaining five Municipal Corporations before expiry of their five year term falling between 15th and 19th October 2005. There is going to be a hiatus as contemplated by Section 7A of the BPMC Act.

20. In view of the above inevitable situation in which it will not be possible for the Commission to hold elections to the other Municipal Corporations in the State by 15th or 19th October 2005, the learned counsel for the petitioners has submitted that in order to reduce the period of hiatus to the minimum, this Court should direct the Election Commission to declare the election program so as to hold elections to the above Corporations within one month from today.

21. While a perusal of the provisions of Part IX A of the Constitution does indicate that the provisions of clause (3) of Article 243U are mandatory, when we find that there was no inaction on the part of the State Election Commission and it was on account of lack of coordination between the State Government, the Delimitation Commission and various Municipal Corporations in the State that the elections to the Municipal Corporations have been delayed by about two months, and that holding elections to the five Corporations in the State before the expiry of the five year term has become virtually impossible, should we direct the Election Commission to hold elections to the Corporations within one month from today which will compel the Corporation to act on the basis of the voters' list reflecting the position as on 1.1.2004, when the preliminary voters' lists including the voters of the reconstituted wards and the newly added areas are going to be available within eight days from today i.e. on 29.9.2005 and that too prepared in compliance with the mandates contained in Articles 243R, 243T and 243ZA(2) read with Article 243P(g) of the Constitution ?

22. We find from the submissions of the respondent authorities that not only the 2001 census figures have already become available but also that on that basis redetermination of the number of wards, the number of seats and the number of seats reserved for Scheduled Castes, Scheduled Tribes and women and even delimitation of wards have already been finalized on 31.8.2005 and that the process of preparation of the preliminary voters' lists has already reached such a stage that such preliminary voters' list is going to be published by 29th September 2005 as per the Election Commission notification dated 3.9.2005 (i.e. within only 8 days from today).

It is also brought to our notice that as far as Vadodara Municipal Corporation is concerned, its territorial limits have been increased from 108.26 sq.kms. to 149.01 sq.kms. by inclusion of nine villages within the limits of Vadodara Municipal Corporation as per the notification dated 1.8.2002. About 81,000 people are thus included within the Municipal limits of Vadodara and out of them, about 45,000 to 50,000 are expected to be included in the list of voters. These persons, who were earlier residents of villages under different village panchayats are now going to be included in the list of voters for elections to the Vadodara Municipal Corporation.

Similarly, the population in Surat has also gone up from 14.98 lakhs as per the 1991 census to 24.33 lakhs as per the 2001 census. The composition of constituencies as per the 1991 census has become so imbalanced that in one ward of Surat the population is 36,321 whereas in another ward, the population is 1,51,474. It is pointed out that such anomalies are found in different wards of other Corporations also and, therefore, the whole object of the Bombay Provincial Municipal corporation (delimitation of Wards and Allocation of Reserved Seats) Rules, 1994 would be defeated. The said Rules provide that the wards shall be constituted in such a manner that the population in all the wards is, as far as possible, equal, in particular, the population of a ward shall not vary by more

than ten percent of average ward's population in the city, provided the State Election Commission may in order to maintain homogeneity or geographic contiguity, constitute a ward consisting of population marginally higher or lower, as the case may be, than the above limit. Average ward population of a city means the number arrived at by dividing the total population of the city by the number of wards determined under Section 5 of the BPMC Act.

23. We have also considered whether the Election Commission may be directed at this stage to compress the period of the second stage of the election process viz. preparation and publication of electoral rolls. After the preliminary voters' lists for all the Corporations are published on 29.9.2005, 22 days' time is required to be given under the statutory Rules for lodging objections against such preliminary voters' lists. The learned counsel for the Commission heavily relied on the decision of the Hon'ble Supreme Court in **AC Josh vs. Sivan Pillai, AIR 1984 SC 921** holding that the Commission has to act in accordance with the relevant statutory provisions for preparation and publication of the voters' lists and conduct of election. Even then, we would have considered directing the Commission to reduce the period of 22 days by a week or even to reduce the period for consideration and disposal of objections by a week, which could have preponed the election process by about 14 days, but in view of the fact that the preliminary voters' lists are going to be published upon delimitation of wards (which would involve reshuffling of the voters from the list of one ward to the list of another ward) and also considering that Navratri festival intervenes during that period, we have refrained from making that suggestion to the Commission. Similarly, the period of 17 days for the consideration and disposal of objections against the preliminary voters' lists will not appear to be longish when it is noticed that Diwali and Id holidays intervene during that period.

24. As regards reliance placed by the learned counsel for the petitioners on the interlocutory order dated 13.9.2005 of the Hon'ble Supreme Court in the case of the

Ahmedabad Municipal Corporation, in the first place, the petition for holding elections to the Ahmedabad Municipal Corporation by 15th October, 2005 was filed as far back as in May 2005. If the petitioners' contentions were accepted, the Court could have, and would have, issued directions requiring the State Election Commission to hold elections within the aforesaid constitutional time limit. Since the writ of mandamus is not to be denied on account of the time taken in the litigation before a learned Single Judge and thereafter before the Letters Patent Bench of this Court, the Apex Court has granted the relief requiring the Commission to complete the elections within the time limit specified in Article 243U(3) of the Constitution. But the present petition for similar direction for elections to the other five Corporations has been filed as recently as on 16th September, 2005 i.e. long after issuance of the State Government notification dated 8.6.2005 determining the number of wards and the number of seats for the reserved categories and the number of seats for various categories and also after publication of the State Election Commission notifications dated 31.8.2005 delimiting the wards. Secondly, when the order was passed by the Hon'ble Supreme Court on 13.9.2005, it was possible to provide for 28 days election program as required by the relevant statutory provisions before the completion of the five year term, which is now not possible in the case of the other Corporations.

25. At this stage, we may note the following legal and constitutional principles laid down by the Apex Court in two decisions :-

25.1 In **AC Jose vs. Sivan Pillai, AIR 1984 SC 921,** it is held as under **:-**

> "25. To sum up, therefore, the legal and constitutional position is as follows :
>
> (a) when there is no Parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections,

(b) where there is an Act and express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Art. 324,

(c) where the Act or the Rules are silent, the Commission has no doubt plenary powers under Art. 324 to give any direction in respect of the conduct of election, and

(d) where a particular direction by the Commission is submitted to the Government for approval, as required by the Rules, it is not open to the Commission to go ahead with the implementation of it at its own sweet will even if the approval of the Government is not given."

(emphasis supplied)

25.2. In **Anugrah Narain Singh vs. State of UP, (1996) 6 SCC 303,** after referring to the relevant provisions in Part IX-A of the Constitution, the Apex Court has held that the latest available census figures had to be the basis for delimitation of the constituencies, for preparation of electoral rolls and also for reservation of seats for Scheduled Castes, Scheduled Tribes and women.

26. Dealing with the petitioners' contention that the State Election Commission could have initiated the election process without waiting for the State Government notification under Section 5(3) of the BPMC Act, we find on an analysis of the provisions of Section 5(3) read with Section 2(18 A) and Section 14 of the BPMC Act that election means and includes entire election process commencing from the delimitation of the constituencies to be known as wards and all stages culminating into election of a Councillor. Where general election is to be held immediately after the census is taken under the Census Act 1948 the relevant figures of which have been published (in the instant case the census figures were published in April 2004) or the limits of a city are altered (1.8.2004 in case of Vadodara

Municipal Corporation) the State Government is required to determine the number of wards into which the city shall be divided, the number of Councillors to be elected to the Corporation and the number of seats to be reserved in favour of the respective categories and it is thereafter that the State Election Commission can carry out the determination of the boundaries of the wards and the allocation of seats reserved in favour of the respective categories amongst the wards in the prescribed manner. In view of the aforesaid decision of the Apex Court, the State Election Commission could not have proceeded to undertake the exercise of determination of the boundaries of the wards without issuance of the notification by the State Government under Sec.5 (3)(a) of the BPMC Act. As already pointed out on behalf of the State Election Commission it was pursuing the matter with the State Government since April 2004 and the State Government was stating that the Delimitation Commission was moved to lift the ban on delimitation of the wards. Since the ban was lifted by the Delimitation Commission in November 2004 for a short period of only about two months, the State Government requested for removing the ban till January 2006 so that it could issue the necessary notification and the Election Commission could undertake the exercise of the delimitation and the election could be held by the end of 2005. That request came to be granted by the Delimitation Committee in March 2005. Hence, the contention that the State Election Commission ought to have proceeded to take necessary steps for delimitation without waiting for any notification of the State Government cannot be accepted.

27. The above view is also fortified by the deicsion of this Court in **Abdulgani Abdulbhai Kureshi vs. State of Gujarat, 1992 (1) GLR 503,** wherein a Division Bench of this Court speaking through Hon'ble Acting Chief Justice Mr Justice SB Majmudar (as His Lordship then was) referred to the relevant statutory provisions and held that “every five years, general ward elections are to be held so that old councillors can be replaced by new councillors and the voters can have effective right to franchise to be exercised once in

five years. This is the essence and thrust of provisions of local self-Government flowing from the Act. When we turn to the relevant election rules which have been pressed in service for election of councillors as laid down by Section 14, we find a well-knit time schedule provided by the legislature for the purposes of holding such ward elections".

This Court, thereafter, made the following pertinent observations :-

> "That is why the time schedule projected by Chapter I of the rules enjoins the Commissioner to start process for preparing electoral rolls at least eight months prior to the expiry of term of existing councillors. It is obvious that before that process is undertaken by the Commissioner, the State of Gujarat is also enjoined to undertake the exercise of fixing number of councillors to be elected at ward elections as per Secs. 5(2) & 5(3), the concerned Commissioner can start the process for holding elections for the wards within the time schedule laid down by the Rules. It is easy to visualise that if eight months are required for the Commissioner to complete the election process under the Rules, the State Government will be required to complete its part of statutory obligation under Sec. 5(2) and (3) AT LEAST WITHIN A MONTH PRIOR TO THE AFORESAID EIGHT MONTHS WHICH WOULD BE AVAILABLE TO THE COMMISSIONER. Consequently, from a conjoint reading of Secs.5(2) and 5(3) and the concerned Rules, it becomes clear that the legislature has contemplated a period of about nine months prior to expiry of the term of the outgoing councillors elected at the last election within which the entire process for fresh elections to the corporation is to be completed by the concerned authorities. ... ... It has to be noted that the statute nowhere prohibits the concerned Authorities from initiating process even earlier. .... "
>
> (emphasis supplied)

In the facts of that case the Court found that the five year term for the Corporation was going to expire between 6th and 12th February 1992 and, therefore, counting nine months backwards from that period, the process of holding fresh elections should have commenced by May 1991. The Court observed that if a voter had filed a writ petition in May 1991 to call upon the State to discharge its obligations by issuing relevant notifications as per Sec. 5(2), (3) read with relevant rules, this Court would not have

hesitated in granting such writ there and then. Unfortunately no one had moved the Court at that time with the result that the term of the Corporation ran out by the time the Court decided the petitions on 20.2.1992.

In the facts of this case, therefore, we are of the view that the delay on the part of the petitioners in moving this Court has made it impossible for us to issue the writ of mandamus requiring the State Election Commission to complete the elections to the five Municipal Corporations before expiry of their five year term.

28. We must now refer to the decision of a Division Bench of this Court in **Rasikchandra D Acharya vs. State of Gujarat, 1995(1) GLR 36,** wherein the Division Bench of this Court held as under:-

> "44. It will be seen that the provisions of Part IX and Part IX-A do not contemplate any hiatus. The elections are required to be regularly held and the only time that an unelected body can exist is when it is superseded. Even then it is incumbent to hold the elections within six months of the supersession. Whereas under Art.83 and Art.172 the duration of the Parliament and the State Legislatures can be extended due to the Proclamation of Emergency, in the case of Local Authorities no such contingency is contemplated by Part IX or Part IX-A of the Constitution and election schedule has to adhere to the provisions of Art.243-E and Art.243-U of the Constitution. Therefore, any attempt on the part of the Executive or the State Legislature not to hold elections cannot be permitted.
>
> 49. .... Merely because the electoral rolls are likely to be revised cannot mean that the elections cannot be held at this point of time. The Election Commission had revised the rolls with reference to the date of 1st of January, 1994. The Assembly rolls as on that day were taken into consideration and necessary amendments were made. In Laskhmi Charan Sen & Ors. vs. A.K.M. Hassan Uzzaman & Ors., AIR 1985 SC 1233, it has been contended that unless claims for inclusion of names and objections relating to inclusion of certain names in the electoral rolls were not disposed of, the elections should not be held. This contention was rejected by the Supreme Court by observing that the non-disposal of objections or claims for inclusion of names in the Electoral rolls could not arrest the process of election to the Legislature. The fact that the revision of the electoral

> rolls, either intensive or summary, was undertaken by the Election Commission did not have the effect of putting the electoral roll last published in cold storage. It was further observed that the revision of electoral rolls was a continuous process which had to go on whether there were elections or no elections. Elections could not be postponed for the reasons that certain claims and objections had still remained to be disposed of.
>
> 50. The aforesaid principles laid down by the Supreme Court clearly apply in the present case. Electoral rolls of the State Assembly as on 1st of January, 1994 are available. They have to be updated, amended or revised so as to bring them in conformity with the provisions of the Panchayats Act, 1993, the BPMC Act, and the Municipalities Act. This is an exercise which has to be undertaken by the State Election Commission."

29. The Division bench of this Court speaking through Hon'ble Chief Justice Mr Justice BN Kirpal (as His Lordship then was) was constrained to make the above observations in Sept. 1994, as the elections to the Municipal Corporations in the State of Gujarat which were due in February 1992 were postponed on one ground or another for almost 30 months and that too in the face of two judgments of this Court; and those judgments and the constitutional provisions were sought to be rendered nugatory by passing a legislation to postpone the municipal elections. It is required to be noted that the election program commencing from the stage of determination of number of wards and seats was required to be commenced from May 1991 and even though the census operations had commenced, the census figures of 1991 were not expected to be received till May 1991 or even till February 1992 when the elections were due. On the other hand, in the facts of this case the 2001 census figures were published in April 2004. The State Government notifications under Sec.5(3)(a) of the BPMC Act have been issued on 8.6.2005 and the State Election Commission has also issued notifications dated 31.8.2005 delimiting the boundaries of the wards and the preliminary voters' lists are going to be published on 29.9.2005. When all these processes are undertaken for giving effect to the provisions contained in Articles 243R, 243T and 243ZA (2) read with Art.243P(g) of the Constitution, this Court is not inclined to exercise its extraordinary discretionary

jurisdiction under Article 226 to require the State Election Commission to hold elections on the basis of the electoral rolls published as on 1.1.2004 without including the names of the voters in the newly added areas or for wards prior to their reconstitution under the Election Commission notification dated 31.8.2005, when the elections to all the five Municipal Corporations are going to be completed in December 2005 on the basis of the voters' lists to be revised on 29.9.2005, and the petitioners themselves have chosen to move this Court as recently as on 16th September, 2005.

30. For all the above reasons, we are not inclined to issue a writ of mandamus to direct the Election Commission to conduct elections to the five Municipal Corporations in the State either by 15th/19th October 2005 or within one month from today. We, however, record the following election program submitted by the learned Advocate General on behalf of the State Election Commission for holding elections to the Baroda, Jamnagar, Rajkot, Surat and Bhavnagar Municipal Corporations for the re-constituted wards under the Election Commission notifications dated 31.8.2005 and on the basis of the voters' lists to be published as per the Election Commission notification dated 3.9.2005:-

Date of final publication of voters list	14.11.2005
Date of application for filing nominations	17.11.2005
Last date of acceptance of nomination forms	24.11.2005
Scrutiny of nomination forms	26.11.2005
Date of withdrawal	29.11.2005
Date for allotment of election symbols	30.11.2005
Date of polling	14.12.2005
Date of counting	16.12.2005

31. Before parting with the matter, we cannot help observing and expressing our confidence that once the State Election Commissioner reads the propositions laid down

and the observations made by us in paragraphs 14 to 18 of this judgment, there would be no occasion for any citizen to file a petition for timely conduct and completion of elections to institutions of local self-government like Municipal Corporations, Municipalities, and Panchayats in the State of Gujarat. Just in case there has to be any such petition, we hope that it will be one filed by the State Election Commissioner.

32. Accepting and recording the above statement made by the learned Advocate General on behalf of the State Election Commission and subject to the observations made in paras 14 to 18 and 31 hereinabove, the petition is dismissed and Rule is discharged with no order as to costs.

[M.S. SHAH, J.]

[D.H. WAGHELA, J.]

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